

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38601 of 2012

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1. Krishna Mohan Kumar S/O Ram Bali Singh R/O Village-Jababipur, P.S.-
Sitamarhi, Distt-Sitamarhi

.... Petitioner/s

Versus

1. The State Of Bihar
2. Sangita Kumari D/O Bindeshwar Singh R/O Village-Jababipur, P.S .&
Distt- Sitamarhi

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Shri Sanjay Kumar, Advocate

For the State of Bihar : Shri. Uma Nath Mishra, App

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

ORAL ORDER

7 26-02-2015 Heard.

The initial facts were that the complainant, while was sleeping in her house, was ravished by the present petitioner on the day of Holi in the year 2006 and the petitioner very often used to sexually exploit her on the assurance that he would marry her. It is stated that the lady also conceived from the petitioner and when she pressed for getting married to him, the petitioner had put vermilion in the parting of her hairs. She alleged that after her family members came to know about her pregnancy and questioned her, she narrated the truth to them. When the petitioner was called by them, he also accepted that he had married the lady.

But, subsequently, the petitioner took her to a doctor so as to getting her miscarried of the child she had in her womb.

The lady filed her complaint petition on 8.8.2008 for an occurrence of 15.3.2006 and onwards which was sent for investigation under Section 156 (3) Cr.P.C. The police reported the case not true. The complaint petition was taken up and after enquiry under Section 202 Cr.P.C., the impugned order of summoning was passed on 8.8.2012 in Complaint Case No. CI/1230 of 2011.

The lady, thereafter, filed a petition under Section 125 Cr.P.C. before the Principal Judge, Family Court, Sitamarhi (Annexure-4) and she categorically stated that she had been married to the petitioner on 14.2.2006 and, inter alia, on other grounds, had sought an order of maintenance under Section 125 Cr.P.C. from the Principal Judge, Family Court in her favour.

The submission is that the order taking cognizance of an offence under Section 376 of the Indian Penal Code is bad and the petitioner has wrongly been summoned. There is no allegation or assertion of facts indicating that the lady was living under some misconception of facts. It is also clear from the averments made by the lady in her complaint petition that she had never indulged into sexual acts with the petitioner under any misconception of facts, rather there was an admission that in order to marrying the

lady the petitioner had put some vermilion on her head. She herself had not stated in the complaint petition that she is the legally wedded wife of the petitioner.

In the above facts and circumstances, an offence under Section 376 of the India Penal Code is not made out, as taking it as the worst case, there is no allegation coming from the lady that in spite of not being his wife the petitioner had indulged in sexually exploiting her.

Considering the facts of the case, as narrated above, and the grounds, which have been pointed out as also the fact that there was no statement made in the long drafted complaint petition that the lady was living under some misconception of facts. The other ingredients of Section 376 of the Indian Penal Code were also not constituted by the facts of the case. The Court does not find it a case under Section 376 of the Indian Penal Code.

The petition succeeds and the same is allowed.

The prosecution, which was initiated by passing the order dated 8.8.2012 in Complaint Case No. CI/1230 of 2011, pending in the Court of Sub-Divisional Judicial Magistrate, Sadar, Sitamarhi, is hereby quashed.

Kanth/-

(Dharnidhar Jha, J)

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